

Joint Review Procedures for Planning and Engineering Documents

April 2007



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Introduction

In April 2007 the Department of Health (DOH) and the Department of Ecology (Ecology) signed a Memorandum of Understanding related to coordination between planning, engineering, public health and safety processes, and water resources. The purpose of this document is to outline procedures DOH and Ecology staff will follow when both agencies are doing a joint review on planning and engineering documents and associated water rights prior to the document approval, to meet the requirements of RCW 90.03.386(1). This document explains what elements of specific planning and engineering documents must have a coordinated review.

DOH has regulatory authority to ensure safe and reliable drinking water, including the review and approval of the design of water systems. Ecology has regulatory authority over water resources management in Washington State, including state issued water rights.

Elements that Require Coordinated Review

DOH and Ecology must coordinate the review of certain planning and engineering documents. The purpose of the coordination is to ensure water systems have sufficient water rights and also to document how a water right place of use expansion occurs through approval of a planning or engineering document.

Water Rights Adequacy

Water systems use planning and engineering documents to demonstrate they have sufficient capacity to provide safe and reliable drinking water to their customers. In these documents water systems may forecast their water production, request an increase in their number of approved connections, or request approval of a new source or intertie. By DOH coordinating the review of these documents with Ecology, water systems will be better informed as to their water rights and their sufficiency to meet projected needs. At most, Ecology can only make a tentative determination as to the extent and validity of any unadjudicated water right. Final determinations of the validity and extent of a water right can only be made in a general adjudication or other court action. Through its role in the review process, Ecology will provide evaluations of the validity and extent of water rights.

Expansion of Water Rights Place of Use to the Identified Service Area

Municipal water suppliers, as defined in RCW 90.03.015, are allowed to expand their water rights place of use to a service area identified in a DOH approved planning or engineering document. As outlined in RCW 90.03.386(2), in order to receive this benefit, the document must be "not inconsistent" with any local plans and development regulations¹; or approved/adopted watershed plans², and be in compliance with the terms of an approved water system plan or small water system management program. As required in RCW 90.03.386, consistency with certain plans and regulations, and compliance with an approved plan, are required at all times, including each time a place of use is expanded in a planning or engineering document. If the consistency and compliance requirements are met, expansion occurs at time of document approval. The expansion only applies to approvals made after September 9, 2003.

Consistency with local plans and development regulations and approved / adopted watershed plans is only required for the area in which the place of use is being expanded. DOH is the lead in making consistency determinations for local plans and development regulations. Ecology is the lead in making "not inconsistent" determinations for approved/adopted watershed plans. DOH and Ecology both have a role in determining compliance. The section on *Compliance with the Terms of a Water System Plan or Small Water System Management Program* and

¹ "Local plans and development regulations" is used as shorthand throughout the document when referring to the types of plans outlined in RCW 90.03.386 which includes: any comprehensive plans or development regulations adopted under chapter 36.70A RCW; any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county.

² "Approved/adopted watershed plans" is used as shorthand throughout the document when referring to watershed plans approved under chapter 90.82 RCW and watershed plans adopted under chapter 90.54 RCW as outlined in the RCW 90.03.386.

Compliance Approach in this document outlines DOH's and Ecology's approach for determining compliance.

Expansion of the place of use to an identified service area is a benefit that municipal water suppliers may take advantage of. For municipal water suppliers who do not request this benefit, the consistency checks are not required under RCW 90.03.386.

Water System Documents for Joint Review

DOH receives many different types of planning and engineering documents. DOH and Ecology developed a list of documents DOH will route to Ecology for their review (Appendix A: *Documents Where Coordinated Review is Required*). This list represents documents where the water system is considered expanding or where additional water may be used. Appendix A also outlines the type of information to be routed, regional office leads, and review timelines.

There may be instances where DOH or Ecology determines the need for review of additional documents. This additional review will be addressed on a case-by-case basis between Ecology and DOH.

Coordination Prior to Document Submittal

Coordination between DOH and Ecology prior to document submittal helps ensure sufficient water rights and minimize costs to the water system. A water system plan is a highly complex document, integrating many regulatory aspects into a single document. Due to this complexity, water systems are urged (but not specifically required) to participate in a *pre-plan conference* with DOH prior to development. Participants in the pre-plan conference usually include representatives from the water system, the professional engineer developing the water system plan³, DOH's regional planner, and DOH's regional engineer. Pre-plan conferences are not routinely held for other type of document submittals. DOH and Ecology will use the steps outlined below when coordinating prior to document submittal.

1. DOH will notify Ecology (via e-mail or telephone) when a pre-plan conference is scheduled. Whenever possible, DOH will provide at least a 20-day notice to Ecology. Ecology may participate in the pre-plan conference, provide information to the water system, or choose not to participate in the pre-plan conference.
2. During the pre-plan conference, DOH staff will request the water system prepare a water rights self-assessment (self-assessment) and contact Ecology to discuss the status of its water rights prior to submitting its water system plan.
3. The water system may submit the self-assessment to Ecology prior to the document submittal. If DOH receives a self-assessment outside of a document submittal, it will send it to Ecology without verifying the content. Ecology may review and provide comments to the water system. During the self-assessment review, Ecology may inform DOH and the water system that there are no significant water resources issues and that the document submittal does not need to be forwarded to Ecology. The notification from Ecology to DOH will include a copy of the self-assessment Ecology reviewed.

³ "Water system plan" is used as shorthand to include both water system plans and water system plan updates as required in WAC 246-290-100.

Document Review

The following coordination process will be followed in the review of all documents identified in Appendix A.

1. The water system will submit a planning or engineering document to DOH.
2. DOH will verify whether the document is listed in Appendix A. If so, DOH will route the relevant information (as outlined in Appendix A) to Ecology using the template provided in Appendix B: *Request to Review Document*.
3. Ecology will review the document. The timeline allowed for the review is listed in Appendix A and begins the date DOH routes the information to Ecology. For water system plans, Ecology will closely follow Appendix C: *Water System Program Review Checklist* or for source approvals, Ecology will closely follow Appendix D: *Source Approval Checklist*.

Ecology's review and comments will be focused on the following areas:

- Water rights self-assessment.
- Improvement projects related to water rights.
- "Not inconsistent" determinations with approved/adopted watershed plans.

Comments made on other water resource related concerns are allowed but will not generally affect the review or approval of the planning or engineering document.

4. Ecology will provide written comments to the water system and to DOH using the template provided in Appendix E: *Providing Comments on a Document*.
 - a. Water rights adequacy – Ecology may provide one of the following types of comments on the adequacy of the water rights:
 - i. Request no changes to the document.
 - ii. Request the water system make changes to the document. DOH will require the water system to respond⁴ to Ecology's comments. The water system will provide their response to DOH and Ecology. If there are still outstanding issues, DOH will request the water system work with Ecology to resolve them. For water rights related changes, Ecology is responsible for ensuring the response is sufficient outside of the document approval process. Ecology's response may range from technical assistance to an appealable enforcement action. DOH will generally use the information provided by the water system when approving the document, unless Ecology has issued an appealable enforcement action (see *Compliance Approach*).

⁴ "Respond" does not imply the water system will concur with Ecology prior to approval.

- iii. Request DOH's on support an appealable enforcement action taken by Ecology when acting on the document submittal. If Ecology issues an enforcement action, Ecology will notify DOH.
- b. Expansion of water rights place of use to the identified service area – Ecology may issue the following comments on “not inconsistent” determinations for watershed planning under chapters 90.82 and 90.54 RCW. If inconsistent, Ecology will document what the inconsistency is.
 - i. There is no approved/adopted watershed plan and therefore a “not inconsistent” check is not required.
 - ii. There is an approved/adopted watershed plan and the expansion is “not inconsistent”.
 - iii. There is an approved watershed plan and a portion of the expanded place of use is inconsistent. The water rights place of use can be expanded to all other portions of the service area (map must be attached).
 - iv. There is an approved watershed plan and the entire expanded place of use is inconsistent with it. Therefore, the water rights place of use cannot expand to the service area identified in the document.
- c. Other water resource related comments – Ecology may provide other comments on water resources concerns. These comments will not generally affect the review or the approval of the planning or engineering document.

Document Approval or Other Action

DOH acts on the document. DOH will provide the approval letter or other action and other appropriate information to Ecology as outlined in Appendix A.

The following are situations and actions DOH will generally take when approving a planning or engineering document. If no comments are received from Ecology, DOH will proceed based on the water system's water rights self-assessment. In certain situations when Ecology does not comment, but DOH is aware of a water rights issue that requires a response, staff will elevate the situation to Ecology's and DOH's management for resolution.

Water Rights Adequacy

The following situations and actions are consistent with Appendix F, DOH's Directive Memorandum B.02: *Water System Capacity Determinations in Engineering and Planning Documents*. Ecology will provide an evaluation on the extent and validity of the associated water rights.

Situation 1

The water system and Ecology agree the existing total annual or instantaneous water rights are sufficient to serve connections through the six-year planning horizon or requested approved number of connections.

DOH's Action

DOH will approve the document and set the water system's capacity based on the capacity analysis provided.

Situation 2

The water system and Ecology agree the existing total annual or instantaneous water rights are insufficient to serve existing connections.

DOH's Action

DOH will adjust the water system's approved number of connections to equal the existing number of connections. When additional capacity is obtained, the water system may submit a revised capacity analysis for DOH's review.

Situation 3

The water system and Ecology agree the existing total annual or instantaneous water rights are insufficient to serve the projected six-year forecast or approved number of connections.

DOH's Action

If water rights are the limiting factor, DOH will adjust the water system's approved number of connections as provided in the capacity analysis to equal the water right limitation. When additional capacity is obtained, the water system may submit a revised capacity analysis for DOH's review.

Situation 4

Ecology and the water system disagree as to whether water rights are insufficient.

DOH's Action

Ecology will first seek voluntary compliance as required in RCW 90.03.605 and will notify DOH. DOH will use the capacity analysis provided by the water system for setting capacity while Ecology is seeking voluntary compliance. DOH will include the disclaimer language (Appendix G) in the approval letter stating there are uncertainties about the water system's water rights and notifying the water system that if those uncertainties are resolved in favor of Ecology, DOH will adjust the water system's capacity accordingly. See *Compliance Approach* for the complete compliance approach.

Situation 5

Ecology provides documentation to DOH there are no water rights related to a proposed source or non-emergency intertie.

DOH's Action

DOH will not approve the source or a non-emergency intertie, even though Ecology has not issued enforcement, unless it is a redundant or replacement source which will solve a public health and safety concern.

Situation 6

Ecology and water system disagree as to whether water rights are insufficient and Ecology has issued an appealable enforcement action.

DOH's Action

DOH will modify the number of approved connections to be consistent with the enforcement action, pending its resolution, as outlined in the *Compliance Approach*. DOH will not set the approved number of connections lower than the existing number of connections.

Expansion of Water Rights Place of Use to the Identified Service Area

If the following criteria are met by operation of law, a municipal water supplier's place of use expands to the service area identified when DOH approves the planning or engineering document.

- a. DOH determines the document is "not inconsistent" with local plans and development regulations.
- b. Ecology determines the document is "not inconsistent" with an approved/adopted watershed plan for the service area.
- c. The municipal water supplier is in compliance with the terms of its approved water system plan or small water system management program.

If an inconsistent determination is made for local plans, development regulations, or approved/adopted watershed plans, DOH and Ecology will follow the compliance approach as outlined in *Compliance Approach*. The document may still be approved, but the place of use will not be expanded for the affected portion of the service area.

Compliance with the Terms of a Water System Plan or Small Water System Management Program

Applicability

In order to receive certain benefits, a municipal water supplier, as defined in RCW 90.03.015, must be in compliance with the terms of its approved water system plan or small water system management program. This is required, in accordance with RCW 90.03.386(2), for expanding a municipal water supplier's water rights place of use to the service area identified in an approved planning or engineering document, including any subsequent expansions. This is also required when a municipal water supplier seeks to change or transfer an unperfected surface water right under RCW 90.03.570.

Elements for Determining Compliance

Both DOH and Ecology have a role in determining compliance. The following elements will be considered for "in compliance determinations":

- Plan approval date is current (DOH).
- Water use efficiency requirements are met (DOH).
- Service area is designated (DOH).
- Water rights self assessment is completed (DOH) and accurate (Ecology).
- Reclaimed water is evaluated for municipal water supplier with 1,000 or more connections (DOH).
- Local government consistency determinations are completed for the retail service area and for expanded portions of the service area (DOH).
- A "not inconsistent" determination is completed for approved/adopted watershed plans for expanded portions of the service area (Ecology).

Compliance Checks

Compliance is required at all times to receive benefits under RCW 90.03.386(2) and 90.03.570. DOH and Ecology will check compliance at the following times:

- When DOH approves a water system plan or a small water system management program.
- When DOH approves an engineering document that affects one of the elements for determining compliance listed above.
- When Ecology issues a change to a municipal water supply purpose water right.
- When DOH or Ecology receives any verifiable concern from any external source.

Compliance Approach

Water Rights Adequacy

In assessing water rights adequacy, Ecology performs an evaluation of the extent and validity of water rights associated with a water system. Ecology will notify the water rights holder and DOH of the evaluation of the water rights limitation. DOH will use the self-assessment provided by the water system to determine capacity. DOH will include the disclaimer language (Appendix G) in the approval letter when there are water rights uncertainties.

If Ecology determines water rights are a limiting factor and the water system disagrees, Ecology may use the following steps in working toward compliance:

1. **Seek voluntary compliance.** Under RCW 90.03.605, Ecology could first seek voluntary compliance if there is disagreement with a water rights self-assessment. Ecology will continue to work with the water system to achieve voluntary compliance. Ecology will first have a discussion with the water system regarding the differences of the water system's interpretation of their water rights, if this is successful, the water system will modify its self-assessment.
2. **Assess the need for additional actions.** If the above discussion is not successful, and Ecology felt it might take enforcement action, it could then issue warning letters clearly laying out its interpretation of the water rights; the violation of which could subject the water system to penalties and further sanctions. Ecology will "direct" (*i.e.* strongly advise) the water system to NOT exercise a certain portion of their alleged water right (*i.e.* that portion in dispute) until the water system and Ecology resolves the issue. If those additional actions do not resolve the situation, Ecology could issue a regulatory order.
3. **Issue a regulatory order.** Ecology could issue a regulatory order (*an appealable action*) under RCW 43.27A.190. The regulatory order could be issued prior to actual violation of water rights (*e.g.* exceeding authorized quantities based on viewing supplemental rights as being "additive" to other rights). This is allowable because orders can require the recipient to cease and desist from "potential violations" based on laws, regulations, and water right provisions that are "alleged to be or about to be violated." The order would be appealable to the Pollution Control Hearings Board.

If Ecology issues an appealable action to the water system for insufficient water rights, Ecology will notify DOH. DOH will support Ecology's enforcement and adjust the water system's approved number of connections pending the outcome of the enforcement. DOH will not set an approved number of connections lower than the existing number of connections.

For Source and Intertie Approvals

If Ecology determines there are not sufficient water rights for a new source or non-emergency intertie, Ecology will notify DOH. DOH will not approve the source or non-emergency intertie

until Ecology determines there are sufficient water rights, unless it is a redundant or replacement source which will solve a public health and safety concern.

Place of Use Expansion

Place of use expansion in DOH approved planning or engineering document occurs by operation of law when the document is approved if the following items are met:

- The municipal water supplier is in compliance with the terms of its approved water system plan or small water system management program.
- The document is “not inconsistent” with local plans and development regulations.
- The document is “non inconsistent” with approved or adopted watershed plans.

Compliance is required at all times to receive the place of use expansion benefit. If a municipal water supplier is not in compliance or it does not meet the consistency requirements, it does not qualify for the service area-based place of use. By operation of law, if a municipal water supplier is in compliance and meets the consistency requirements, the place of use is expanded.

If a municipal water supplier is out of compliance, the place of use reverts to the service area identified in the most recent DOH approved planning or engineering document, if approved after September 9, 2003. If no other planning or engineering document exists, the place of use reverts to the original water rights place of use. If the municipal water supplier is out of compliance because of an inconsistency that is limited to a specific area of the expanded place of use, only that area where there is an inconsistency is no longer expanded.

Both DOH and Ecology may take enforcement actions on “not inconsistent” or compliance issues. Each agency may only take enforcement on the elements where it has oversight. If a compliance-related concern is raised, the agency which has oversight will notify the municipal water supplier, the local government with jurisdiction, and the other agency. The agency with oversight will request the municipal water supplier to respond to the concern in a timeframe determined reasonable by the agency. If the concern is not resolved, the agency will use its existing compliance authorities to resolve the concern.

Both agencies will begin with voluntary compliance. As appropriate, they may take escalating levels of enforcement to achieve compliance. The goal is to achieve compliance, not to revert the place of use.

DOH will use their existing compliance matrix for determining the appropriate level of compliance.

Ecology will first seek voluntary compliance under RCW 90.03.605, which requires deliberate steps to achieve compliance are taken starting with education and technical assistance. An appealable enforcement action will only be issued after the requirements of RCW 90.03.605 have been met. Ecology will use its enforcement authority judiciously. While Ecology cannot predetermine the outcome of a compliance or legal action, or renounce its legal authorities and responsibilities, Ecology will work cooperatively with the water system to resolve the issue.

All correspondence related to any enforcement must be sent to the other agency, the municipal water supplier, and local government with jurisdiction.

Unperfected Surface Water Right Transfers

Municipal water suppliers may change or transfer an unperfected surface water right for municipal water supply purposes in accordance with RCW 90.03.570. One of the requirements for this transfer is the municipal water supplier must be in compliance with the terms of an approved water system plan or small water system management program. This compliance determination must be made at the time of the change or transfer. If a municipal water supplier is not in compliance with the terms of its water system plan or small water system management program, or it does not meet one of the other criteria outlined in RCW 90.03.570, it cannot change or transfer the unperfected surface water right.

Both agencies will use existing compliance authorities. Both will begin with voluntary compliance. As appropriate, they may take escalating levels of enforcement to achieve compliance. Each agency may only take enforcement on the elements where they have oversight. All correspondence related to enforcement must be sent to both agencies, the municipal water supplier, and local government with jurisdiction.

Appendices

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Appendix A: Documents Where Coordinated Review is Required

Document	To be Forwarded by DOH to Ecology for Comments	What to Send	Not to be Forwarded	Timeline for Ecology Review	DOH Lead	Ecology Lead	Documentation of Approval or Other Action to Ecology
Water System Plans	<ul style="list-style-type: none"> New Water System Plans Updated Water System Plans (six-year cycle) Amendments that increase number of approved connections or service area Amendments which are source approvals (see the source approval section below) 	Entire Submittal	Other General Amendments	<ul style="list-style-type: none"> 60 days for initial review Following the initial submittal, Ecology will work with the water system directly 	Regional Planner	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections) Copy of Final Water System Plan or Amendment
Small Water System Management Program	<ul style="list-style-type: none"> Submittals when the number of approved connections is greater than the existing connections Submittals when the self-assessment shows a deficiency 	Enter Submittal	Water Systems "at capacity" when the self-assessment shows sufficient or a surplus of water rights	<ul style="list-style-type: none"> 60 days for initial review Following the initial submittal, Ecology will work with the water system directly 	Regional Planner	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections) Copy of Final Small Water System Management Program
Source Approvals	<ul style="list-style-type: none"> Group A: New Source Group A: Replacement Source <p>NOTE: Group A wells with exempt water rights also to be included</p>	<ul style="list-style-type: none"> Self-assessment Well Log Well Location (map) 	Group B	<ul style="list-style-type: none"> 30 days for initial review 	Regional Engineer	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action
New Water System Approvals (non-community)	<ul style="list-style-type: none"> Group A proposals Group B proposals where there is an instream flow water reservation 	<ul style="list-style-type: none"> Self-assessment Well Log Well Location (map) 	Group B where there is NO instream flow water reservation	<ul style="list-style-type: none"> 30 days for initial review 	Regional Engineer	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action

Document	To be Forwarded by DOH to Ecology for Comments	What to Send	Not to be Forwarded	Timeline for Ecology Review	DOH Lead	Ecology Lead	Documentation of Approval or Other Action to Ecology
Requests to Increase the Number of Approved Connections		<ul style="list-style-type: none"> Self-assessment 	Information previously included in an approved Water System Plan	<ul style="list-style-type: none"> 30 days for initial review 	Regional Engineer	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action (documenting the approved number of connections)
Intertie Proposals	<ul style="list-style-type: none"> Group A proposals 	<ul style="list-style-type: none"> Self-assessment 	Group B	<ul style="list-style-type: none"> 30 days for initial review 	Regional Engineer	Regional Water System Coordinator	<ul style="list-style-type: none"> Letter of Approval or Other Action

NOTE: Administrative errors (*i.e.* where approvals already occurred, but which were entered mistakenly or not entered) and existing water system approvals (water system is "at capacity") not forwarded to Ecology.

Appendix B: Request to Review Document

DOH will use this template when requesting Ecology to review a planning or engineering document.

DATE

Contact Person
Departmental of Ecology
_____ Regional Office
Address
Address

Subject: Water System; PWS ID#; County; Project Number; Name of Document

Dear Contact Person:

I have attached a copy of the document type for the name of water system water system located in _____ County. Please review and provide comments, as required in the 2007 Memorandum of Understanding. Comments should be focused on the elements identified in the *Joint Review Procedures for Planning and Engineering Documents*. Comments on other elements of the document are welcome, but a response from the water system on other elements is not required.

Please provide written comments by 30 or 60 days from the date of this letter. Any changes to the document regarding water rights will be forwarded to your office for review.

If no response is received by the comment deadline, DOH may determine compliance based on information provided by the water system. Please mail comments to:

Regional Planner or Engineer
Department of Health
Regional Office Address

If you have any questions, please contact me at _____. Thank you for your time and assistance.

Sincerely,

Regional Office Planner or Engineer
Office of Drinking Water
Division of Environmental Health

Appendix C: Water System Plan Review Checklist

Ecology will use this checklist when reviewing water system plans.

System Name: _____

Comments Due By: _____

Date Received: _____ Date Comments sent to DOH: _____

Water System Plan Review Checklist

The purpose of this checklist is to provide consistent Ecology review of water system planning documents. Items Ecology considers mandatory are in **bold font**.

1. ☐ Completed Read the Executive Summary _____
2. ☐ Completed Plan is "not inconsistent with" county-approved watershed plan. Comments on watershed planning coordination (coordinate with Watershed Leads)
3. ☐ Completed Compare water rights self-assessment to Ecology water right files.
 - a. Is a self-assessment included?
 - b. Is the self-assessment complete? Does it include all water rights held by the system? (Do a WRTS check based on system name and system TRS, sometimes rights listed under original developer name).
 - c. Are additive/non-additive relationships correct?
 - d. Are pending applications and change applications identified?
 - e. Are self-assessment's included for current, 6 and 20-year projections?
 - f. Is the authorized Qi compared to installed pump capacity (not MDD)?
 - g. Is the math correct in the self-assessment?
4. ☐ Completed If system is over **total** Qa on **total** water rights, recommend a growth restriction⁵ _____
5. ☐ Completed If system sources are over **individual** Qa limit on a water right, determine comment based on enforcement criteria (e.g. potential for change application, impairment issues, voluntary compliance, notice of violation, departmental order). _____
6. ☐ Completed If system projects it will exceed **total** Qa within 6-year planning period, recommend a growth limitation for the number of projected connections that can be served by the rights¹.
7. ☐ Completed If system sources are over total or individual Qi on water rights, determine comment based on enforcement criteria (e.g. throttling/replacing pumps, public health/safety needs, compliance criteria).
8. ☐ Completed Compare all sources listed in system inventory to existing water right authorizations. If unauthorized sources exist, comment on need for new water right application, change application or showing of compliance form. _____
9. ☐ Completed If system is over its water rights, consider issuing a metering order to track compliance.
10. ☐ Completed Review source capacity projections/capital improvement plan (CIP) for 6-year and 20-year demand projections. If additional source capacity is needed in the next 6 years, what water rights will be used (e.g. existing rights through change/showing of compliance, new rights)?
11. ☐ Completed Review capital improvement plan. If acquisition/transfer of water rights is planned to address water right deficiencies, are expenditures being budgeted (e.g. acquisition costs, conservancy board fees, study costs to locate rights to acquire)? If they show new source capacity, how will they get to that capacity?
12. ☐ Completed If wells are identified as "abandoned" or no longer in use, check if Ecology has record of proper decommissioning. If no record exists and well location is still known, include comment that wells must be decommissioned in accordance with WAC 173-160-381.
13. ☐ Completed Comments on the effectiveness of the water conservation program as appropriate.
14. ☐ Completed Comments on the reasonableness of the water shortage response program as appropriate.
15. ☐ Completed Comments on the plans for water reuse (coordinate with Ecology Water Reuse Workgroup) as appropriate.
16. ☐ Completed Include Ecology comment response form with comment letter.

See reverse side for any explanatory notes.

Ecology Reviewer

Date

⁵ DOH will condition WSP approvals to limit new connections if water right quantity (QaQi) or physical capacity is determined to be a limiting factor for the system (DOH *Municipal Water Law Guidance*, Page 2)

Appendix D: Source Approval Checklist

Ecology will use this checklist when reviewing engineering documents requesting approval of a new source.

System Name: _____

Comments Due By: _____

Date Received: _____ Date Comments sent to DOH: _____

Source Approval Review Checklist

The purpose of this checklist is to provide consistent Ecology review of new source approval documents. The focus of this checklist is to ensure that new source(s) are authorized consistent with water rights held by the system. Items Ecology considers mandatory are in **bold font**.

1. ☐ Completed Make sure the following information has been provided by the Department of Health:
 - h. Map showing location of new well(s), and preferably the location of existing wells.
 - i. Water Rights Self-Assessment Form.
 - j. Well drilling report(s) for the new well(s).
 - k. Completed "Showing of Compliance with RCW 90.44.100(3)" form for each new source (if applicable, and if it was sent to Health).
 - l. (Optional): Brief letter or report describing the replacement project.
2. ☐ Completed
 - a. Review copies of all water rights documents.
 - b. Compare new source(s) identified on system map to existing water right authorizations:
 1. If new source(s) is/are outside most recently published point of withdrawal's legal description for the water right, comment on need for new water right application or change application.
 2. If new source(s) is/are within the most recently published point of withdrawal's legal description for water rights of record, make sure the "Showing of Compliance with RCW 90.44.100(3)" form is correctly filled out for the appropriate water right. If no form is included, contact the system directly to request one.
3. ☐ Completed Verify well drilling report(s) match the source(s) being evaluated by inspecting the document and comparing it with those in Ecology's Well Log Database.
4. ☐ Completed If any wells are identified as "abandoned" or no longer in use, check if Ecology has record of proper decommissioning. If no record exists and well location is still known, include comment that wells must be decommissioned in accordance with WAC 173-160-381.
5. ☐ Completed Compare water right self-assessment quantities to Ecology water right files.
 - a. Is the self-assessment complete? Does it include all water rights held by the system? (Do a WRTS check based on system name and system TRS, sometimes rights listed under original developer name).
 - b. Is the math correct in the self assessment?
 - c. Are additive/non-additive water right relationships correct, including Qi and Qa?
 - d. Are pending applications and change applications (if any) identified?
 - e. If the capacity of the new source exceeds the authorized quantity for one or more of the water rights, then recommend the source capacity be conditioned to the water right authorization.
6. ☐ Completed If system sources are over individual Qa limit on a water right, determine comment based on enforcement criteria (e.g. potential for change application, impairment issues, voluntary compliance, notice of violation, departmental order). _____
7. ☐ Completed If system sources are over total or individual Qi on water rights, determine comment based on enforcement criteria (e.g. throttling/replacing pumps, public health/safety needs, compliance criteria).
8. ☐ Completed Include Ecology comment response form with comment letter.

Ecology Reviewer

Date

Notes:

Appendix E: Providing Comments on a Document

Ecology will use this template when providing comments to DOH and the water system on a planning or engineering document.

DATE

Water System Name	DOH Regional Office
Address	Address
City, ST Zip	City, ST Zip

Subject: Water System Name; PWS ID#; County; Project #; Name of Document

Dear Contact Person:

Ecology received a request from the Department of Health (DOH) to review and comment on the type of document for the name of water system water system. Below are Ecology's comments.

_____ Ecology has no comments on the document.

_____ Attached are Ecology's comments on the document. Please revise the document based on the attached comments.

_____ Ecology has taken regulatory action against name of water system which can be appealed directly to the Pollution Control Hearings Board (attached). Consistent with the *Joint Review Procedures for Planning and Engineering Documents*, Ecology requests DOH use this information in determining the water system's capacity.

_____ A "not inconsistent" determination is not required because there is not approved/adopted watershed plan for WRIA name or the expansion of the place of use is not needed.

_____ Ecology has determined this type of document is "not inconsistent" with the adopted/approved watershed plan for WRIA name.

_____ Ecology has determined this document is inconsistent with the approved/adopted watershed plan for WRIA name. Please revise based on the attached comments.

_____ Ecology has determined this document is inconsistent with the approved/adopted watershed plan for WRIA name in one portion of the service area. The place of use can be expanded to all areas except as identified in the attached map or you may revise based on the attached comments.

Please send a copy of your responses to me and the DOH Regional Office. If you have any questions, please contact me at _____.


Sincerely,

Water System Plan Reviewer
Department of Ecology

Enclosures: Comments on document

Appendix F: DOH's Directive Memorandum – Water System Capacity Determinations in Engineering and Planning Documents

Service Capacity Determinations for Group A Public Water Systems

Title:	Service Capacity Determinations for Group A Systems	DM B.02
References:	Group A Public Water Supplies, chapter 246-290 WAC 2009 Ecology Interim Interpretive and Policy Statement Health-Ecology Memorandum of Understanding (MOU) See associated Procedure document for specific direction	
Applies to:	All Office of Drinking Water Regional Office Staff	
Contact:	Linda Kildahl, Technical Assistant to Field Operations	
Phone:	(360) 236-3186	E-mail: linda.kildahl@doh.wa.gov
Effective Date:	March 4, 2010	Review Date: March 4, 2013
Supersedes:	DM B.02, Water System Capacity Determinations in Engineering and Planning Documents (8/27/04)	
Approved:		Jerrod Davis Deputy Director for Field Operations

Statement

WAC 246-290-100, 246-290-110, and 246-290-120 identify procedures and criteria for approval of water system plans, project reports, and construction documents. WAC 246-290-222 describes criteria related to source, treatment, storage, and transmission system elements of a water system which must be evaluated to establish a purveyor's physical capacity to deliver safe and reliable water service to consumers.

This Directive Memorandum (DM) and its attachments establish the framework and procedures for Office of Drinking Water (ODW) staff to appropriately and consistently establish, document, and modify Group A public water systems' service capacity to provide an adequate, reliable water supply to their customers.

Definitions:

The following definitions are specifically for the purpose of understanding this Directive Memorandum and attached documents.

“Approved number of connections” refers to the total number of single family residences, apartment dwelling units, and multi-family dwelling units; the total number of recreational and transient accommodation units; plus all other non-residential service connections (institutional, industrial, commercial, or agricultural) that a water system is approved to serve.

“Engineering evaluation” means an evaluation of the water system *as it currently exists* prepared by a professional engineer, which provides the basis for approving a change in service capacity. This capacity evaluation tool is only available to purveyors that are not otherwise required to prepare a water system plan (WSP). For purveyors seeking an increase in approved service capacity, no expansion of service area, no additional capacity-related infrastructure, and no expansive water rights changes can be considered or assumed in the evaluation.

“Physical capacity” means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other.

“Service capacity” means the maximum capability, expressed in ERUs, of a system to provide adequate, reliable water service to its consumers within the constraints of its physical capacity, water right limitations, and distribution system leakage (DSL).

“Unspecified” means a water system where the approved number of connections is unspecified.

“Water demands” refers to average daily demand, maximum daily demand, or peak hourly demand for all water system uses, including DSL.

“Water right limitation” means the limitation in aggregate quantities of instantaneous and annual allocations. As a result of the June 11, 2008 King County Superior Court ruling on the Municipal Water Law, a water right limitation for privately-owned (non-municipal) water suppliers may also consist of any service connection limit identified in a water right document in accordance with the Department of Ecology (Ecology) 2009 Interim Interpretive and Policy Statement (IPS).

Framework

1. **Purveyors calculate their own service capacity.** ODW staff do not independently calculate a water system's service capacity. ODW staff review water system plans, project reports, and engineering evaluations for conformance to applicable regulations and for consistency with appropriate design standards, and to verify that the stated service capacity does not exceed physical capacity or water right limitations.

2. **Re-evaluating service capacity.** ODW staff will not re-evaluate a purveyor's service capacity determination made prior to the effective date of this DM unless there is a fundamental change to the basis of the original evaluation that threatens the purveyor's ability to provide an adequate, reliable water supply to customers. In these instances, ODW staff may request an updated WSP or engineering evaluation to re-establish the approvable service capacity.
3. **The calculation of service capacity must reflect physical capacity limits and water right limitations, whichever is lower, based on actual water use data.** Purveyors may establish their own demand projections subject to a consistency review by local government when the purveyor is a municipal water supplier. Projected conservation savings and reduction in DSL cannot be factored into the demand projection used to determine service capacity.
4. **Purveyors must calculate their service capacity in ERUs.** ODW staff will translate and record the reported capacity as an approved number of connections, consistent with WAC 246-290-222. This conforms to the unit of measure used on the Water Facilities Inventory (WFI) form.
5. **ODW staff will document service capacity in approval letters and in the drinking water database (Sentry).** The approval letter associated with any planning or engineering document, which supports a change in a water system's approved service capacity, will document the approved service capacity.
6. **Water Right Self Assessment.** A water right self-assessment form must be included in the following documents when an increase in service capacity is requested:
 - water system plan (WSP)
 - small water system management program (SWSMP)
 - source approval project
 - new water system approval
 - intertie proposal
 - project report
 - engineering evaluation

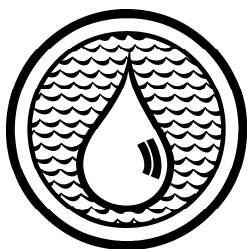
ODW staff will not evaluate water right documents. ODW staff will evaluate water right limitations based on the information supplied by the purveyor in the water right self-assessment form, except when:

- Ecology issues an appealable action, or
- Ecology provides documentation to ODW that water rights held by a non-municipal water supplier identify a specified number of service connections. (See current Health-Ecology Memorandum of Understanding (MOU) and the 2009 Ecology IPS for more information.)


7. **Project reports and construction documents intended to increase a community water system's service capacity must be adequately addressed in a current, approved WSP (WAC 246-290-110 and 246-290-120).** See Section Two of the procedure document for guidance when the WSP is not current or the project is not adequately addressed in the WSP. Project reports and construction documents that are not intended to increase the service capacity of a community water system may be approved under the circumstances described under Section Three of the procedure document.
8. **ODW may document the approved service capacity as "unspecified".**
 - a. ODW staff may document a purveyor's approved service capacity as "unspecified", rather than as a number of connections, if all criteria listed in Section Four of the procedure document are met.
 - b. The regional office management team must approve the decision not to document a purveyor's approved service capacity as "unspecified" when all eligibility criteria listed in Section four of the procedure document are met. Such a decision must be explained in the approval letter if an "unspecified" designation is requested or if a previous "unspecified" designation is removed.
 - c. An unspecified designation can be made based on information submitted in a WSP. It cannot be made based on information submitted in a project report, engineering evaluation, or SWSMP.
 - d. ODW staff should not consider a purveyor eligible for the "unspecified" designation if they depend on leased water rights in order to meet projected six-year demands.
9. **Changing the number of approved connections on the WFI form.** ODW staff will not change the approved number of connections on the WFI, except as described in Section Six of the procedure document.
10. **Coordination with Ecology.** ODW staff will follow the procedures for coordinating the processing of planning and engineering document approvals with Ecology in accordance with the latest version of the Health-Ecology MOU.
11. **Pre-plan conferences held prior to the effective date of this DM.** ODW staff will review WSPs submitted by purveyors who participated in a preplan conference before the effective date of this DM consistent with the understanding reached in the preplan conference. If ODW staff intend to apply changes presented by this DM, those changes must first be negotiated into an amended preplan agreement.

Review and Approval

The Policy and Finance Section will be responsible for coordinating any updates or rescinding of this directive memorandum or its associated procedure(s). The Director of the Office of Drinking Water has full authority to review and approve this directive memorandum and associated procedure. The Director also has the authority to delegate this responsibility.



Procedure

Title:	Service Capacity Determinations for Group A Systems	Number:	Proc DM B.02
References:	Group A Public Water Supplies, chapter 246-290 WAC 2009 Ecology Interim Interpretive and Policy Statement		
Applies to:	All Office of Drinking Water Regional Office Staff		
Contact:	Linda Kildahl, Technical Assistant to Field Operations		
Phone:	(360) 236-3186	E-mail:	linda.kildahl@doh.wa.gov
Effective Date:	March 4, 2010	Review Date:	March 4, 2013
Supersedes:	DM B.02, Water System Capacity Determinations in Engineering and Planning Documents (8/27/04)		
Approved:	 Deputy Director for Field Operations		

1. Recording and reporting.

- a. See the example in Attachment A for guidance on how to document the results of a service capacity evaluation.
- b. When to record capacity in Sentry following approval of construction projects that increase the approved number of connections. Office of Drinking Water (ODW) staff will make the appropriate edits in Sentry to the number of approved connections upon receipt of the Construction Completion Report (CCR) form, consistent with WAC 246-290-120. ODW staff will not change the approved number of connections until a completed CCR form has been received and signed by a licensed professional engineer indicating all facilities were constructed as approved. Examples of such projects include new or modified sources, interties, reservoirs, and transmission mains.
- c. When to record capacity in Sentry following all other approvals. ODW staff will make the appropriate edits in Sentry to the number of approved connections upon approval of water system plans (WSPs), Small Water System Management Program (SWSMPs), existing system approvals, project reports, and engineering evaluations. ODW staff will not change the approved number of connections until the document is approved, except as noted in number 6c of this procedure.
- d. How to report service capacity to purveyors. ODW staff will use the language in Attachment B when communicating ODW approval of any original or updated

capacity determination. The approval letter may include (for informational purposes) the breakdown of connections at a more detailed level if the information is readily available or if requested on a case-by-case basis by a local health jurisdiction.

- e. Existing non-expanding water systems. ODW staff will record the service capacity for existing non-expanding water systems as noted below:
 - i. If the water system has never been approved, ODW staff will record the approved service capacity equal to the existing number of connections following:
 - Approval of a SWSMP; and
 - Existing system information required under WAC 246-290-140.
 - ii. If the water system was approved, but the number of approved connections was never recorded in Sentry, ODW staff will record in Sentry the approved service capacity equal to the original approval if there is a CCR form signed by a licensed professional engineer corresponding to the project approval documents.

2. **WSP criteria for approval of projects intended to increase service capacity.** ODW staff may review and approve project submittals for infrastructure projects intended to increase the service capacity of community water systems, based on the planning status described below.

- a. Purveyors with an approved WSP on file, and the WSP approval is current:
 - i. If the proposed project is in the WSP, then ODW staff may review and approve the project submittal.
 - ii. If the proposed project is not included in the WSP, then the purveyor must obtain approval of an amended WSP. The project report may serve as the WSP amendment. In such cases, the project review process may involve local government and Ecology in a manner equal to the original WSP approval process.
- b. Purveyors with an approved WSP on file, but the WSP approval has lapsed:
 - i. If the proposed project is in the expired WSP and a yellow operating permit has not been issued for failure to meet a planning requirement, then ODW staff may review and approve the project.
 - ii. If the proposed project is in the expired WSP and a yellow operating permit has been issued for failure to meet a planning requirement, then ODW staff may review and approve the project provided that:

- The purveyor has already submitted a WSP for review and it is in the review process; or
 - The regional office has approved a WSP development schedule (Bilateral Compliance Agreement or Agreed Order).
- iii. If the proposed project is not included in the expired WSP, then ODW staff may review and approve the project provided the conditions described in Section Two b.ii. above are met, except that ODW staff may not increase the approved number of connections until an updated WSP is submitted and approved.
- c. Purveyors without an approved WSP on file. ODW staff will not review or approve a project that is intended to increase service capacity until a WSP is submitted and approved.

3. **WSP criteria for approval of projects not intended to increase service capacity.** ODW staff may review and approve project submittals that are not intended to increase the service capacity of community water systems when the project is not adequately addressed in a current, approved WSP as noted below:

- a. Public health and safety projects (e.g., projects in pursuit of improved fire suppression capacity, treatment, development of an alternate source).
- b. System reliability projects (e.g., projects in pursuit of increased standby storage per equivalent residential unit (ERU), redundant source, added pump in booster pump station).

ODW staff will not increase the number of approved connections as a result of the project approval, even if the project increases service capacity. ODW staff may not increase the number of approved connections until a WSP is submitted and approved.

4. **Criteria for approving a system with an “unspecified” number of connections.** ODW staff may approve a water system for an unspecified number of connections if all of the following criteria are met:

- a. The purveyor documents its service capacity in an approved water system plan.
- b. The purveyor serves at least 500 connections.
- c. The purveyor’s water right self-assessment indicates there is sufficient water to meet projected six-year water demands. (See Section Five below for guidance if the purveyor purchases wholesale water to meet projected six-year water demands.)
- d. The purveyor is not limited by a specified number of service connections included in their water rights. (See Ecology Interim Interpretive and Policy Statement).
- e. The purveyor demonstrates that the system’s existing infrastructure provides sufficient physical capacity to meet the projected six-year water demand; or the purveyor presents a credible capital improvement plan and budget which will assure

the physical capacity keeps pace with projected growth in demand over the next six years.

- f. The purveyor describes how its management will account for new consumptive uses, and how their accounting will guide decisions on new water service applications to assure physical capacity and water right limitations are not exceeded.
- g. The WSP includes standard specifications for water main installation.

5. Additional criteria for approving an “unspecified” number of connections when the purveyor purchases wholesale water.

- a. A purveyor may have an agreement to purchase wholesale water to meet its projected six-year water supply needs. However, the expiration of such agreements within the six-year planning horizon, without renewal, may create a water supply deficit. The relative certainty over renewal of an expiring agreement impacts eligibility for the “unspecified” designation, as follows:
 - i. If the wholesale agreement is between two municipally-owned water utilities (including cities, towns, Public Utility Districts, counties, water districts, port districts, irrigation districts), then ODW should consider the purchasing purveyor eligible for the “unspecified” designation provided that both parties to the agreement submit correspondence indicating their good-faith intention to renew the agreement before it expires.
 - ii. ODW staff should not consider the purchasing purveyor eligible for the “unspecified” designation if the wholesale agreement is not between two municipally-owned water utilities.

6. Changing the number of approved connections listed on the Water Facilities Inventory (WFI) form.

- a. If a purveyor’s service capacity has been designated “unspecified”, ODW will maintain the “unspecified” designation until the purveyor submits an updated WSP or engineering evaluation that indicates the purveyor no longer meets the “unspecified” criteria established in Section Four of this procedure. ODW staff will enter the change into Sentry according to the direction given in Section One of this procedure.
- b. If a purveyor’s service capacity has already been calculated by the purveyor and approved by ODW, ODW may require the purveyor to re-evaluate its service capacity through submission of a WSP, WSP update, or engineering evaluation if staff identify an issue related to the water system’s physical capacity that threatens the purveyor’s ability to provide a safe and reliable water supply to consumers. Such issues may include a material change to the basis of the original capacity assessment.
- c. ODW staff are not authorized to reduce the approved service capacity, translated into a number of approved connections below the number of connections actually

connected to the purveyor's water system. This direction is consistent with the Health-Ecology MOU. This direction applies to systems with an unspecified and a specified number of approved connections.

- i. ODW staff will record the "number of existing connections" as the total number of single family residences, apartment dwelling units, and multi-family dwelling units; the total number of recreational and transient accommodation units, and all other non-residential service connections (institutional, industrial, commercial, or agricultural) actually connected to the water system, as reported by the purveyor.
 - ii. ODW staff will reduce the number of approved connections upon approval of the planning or engineering document, except in the case when ODW takes an enforcement action to assure the timely completion of the planning or engineering document. If an enforcement action is taken because of a purveyor's lack of due diligence to complete the document, the regional management team may authorize staff to set the number of approved connections equal to what is currently shown on the WFI. This number will serve as the service capacity limit until the planning or engineering document is approved by ODW.
- d. It is possible for ODW staff to receive information from a purveyor that triggers the need to re-calculate the number of approved connections *even though the approved service capacity has not changed*. For example, if a purveyor submits information that the addition of a certain number of non-residential connections represents a different number of ERUs, then the number of approved connections reported on the WFI should be amended. In these unusual circumstances, regional management should be consulted on how to respond to the purveyor's information. This situation would not apply to systems with an "unspecified" designation. ODW staff are not expected to proactively inquire about the water use associated with new non-residential connections.
- e. Regional staff will communicate in writing to the purveyor each time the ODW approves of a change in the purveyor's service capacity or re-calculates the approved number of connections.

The Department of Health is an equal opportunity agency. For persons with disabilities, this procedure is available on request in other formats. To submit a request, please call 1-800-525-0127 (TTY 1-800-833-6388). For additional copies of this procedure, call 1-800-521-0323.

Appendix G: Disclaimer Language

DOH will include the following disclaimer language regarding water rights uncertainties in the approval letter:

This approval does not provide any guarantee and should not be considered to provide any guarantee concerning legal use of water or any subsequent water right decisions by the Department of Ecology (Ecology). Ecology's comment letter dated (DATE) indicates that there are uncertainties regarding your water rights or the resolution of those uncertainties. Depending on the resolution of the uncertainties, further planning and/or other action may be necessary.

DOH will include the following disclaimer language when Ecology comments are not received in the approval letter:

This approval does not provide any guarantee and should not be considered to provide any guarantee concerning legal use of water or any subsequent water right decisions by the Department of Ecology (Ecology). A copy of this document was sent to Ecology on (date of transmittal). As of the date of this letter, comments have not been received from Ecology. DOH is making this approval based upon the water system's water rights analysis.

